

\*E-FILED 06-28-2011\*

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

## SAN JOSE DIVISION

C&C JEWELRY MANUFACTURING, INC., No. C09-01303 JF (HRL)

**Plaintiff,**

## **ORDER DENYING DEFENDANT'S MOTION TO COMPEL DOCUMENTS**

V.

## TRENT WEST,

[Re: Docket No. 165]

**Defendant.**

Plaintiff C&C Jewelry Manufacturing, Inc. (C&C) filed this patent action seeking declaratory relief. The patents in suit generally pertain to methods for making jewelry from tungsten carbide. Defendant Trent West has asserted counterclaims, alleging that jewelry rings manufactured by C&C infringe his patents.

Defendant moves to compel the production of documents responsive to Request for Production No. 66, which seeks “[d]ocuments sufficient to identify C&C’s profitability and viability as a company, including the net and gross revenues generated on the sales of all jewelry items and the percentage of such revenues derived from the sale of the accused rings.” (Mot. at 2). C&C opposes the motion. The matter was deemed submitted without oral argument. CIV. L.R. 7-1(b). Upon consideration of the moving and responding papers, this court denies the motion.

To be clear, C&C does not oppose discovery of financial information relating to the

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1 accused products; and, C&C says that it already has produced such documents. The parties  
2 disagree, however, as to whether West is entitled to broader discovery pertaining to C&C's  
3 products that have not been accused of infringement. West maintains that C&C's overall  
4 profitability, including revenues derived from non-accused products, is relevant to the  
5 determination of a reasonable royalty. C&C says that, aside from the accused products, it sells  
6 over one hundred other products that are not even made of tungsten carbide and which it says  
7 are entirely unrelated to the patents in suit. (Opp. at 3; Wood Decl. ¶ 5). Plaintiff also points  
8 out that the request seeks documents for an unlimited period of time. Inasmuch as West is a  
9 competitor, C&C also expresses concern about disclosing sensitive financial information about  
10 the company's overall profitability, particularly when C&C believes that such wide-ranging  
11 discovery is unwarranted.

12 West has not managed to persuade that the disputed discovery is relevant or reasonably  
13 calculated to lead to the discovery of admissible evidence. FED. R. CIV. P. 26(b)(1). West cites  
14 no binding precedent holding that the overall financial condition of an accused infringer is *per se*  
15 relevant to the determination of a reasonable royalty. As a logical matter, this court is  
16 unconvinced that sales of C&C's non-accused products, which reportedly are not made of  
17 tungsten carbide, have any relevance to the accused rings. There is nothing in the record  
18 presented to suggest, for example, that sales of C&C's other products are driven by or otherwise  
19 connected to the accused rings. Nor is defendant aided by 3Com Corp. v. D-Link Sys., Inc.,  
20 No. C03-2177, 2007 WL 949596 \*3-4 (N.D. Cal., Mar. 27, 2007) (Walker, J.) in which the  
21 patentee sought worldwide sales of accused products only. As for other non-binding decisions  
22 cited by defendant, this court finds them readily distinguishable and declines to follow them  
23 here. See Century Wrecker Corp. v. E.R. Buske Mfg. Co., 898 F. Supp. 1334, 1338 (N.D. Iowa  
24 1995) (concluding that, where the accused infringer affirmatively sought to introduce evidence  
25 of its overall profitability to disprove damages, and where the patentee sought to exclude such  
26 evidence at trial, the evidence was relevant to reasonable royalty, but nonetheless entitled to  
27 very little weight); Phase Four Industries, Inc. v. Marathon Coach, Inc., No. C04-4801, 2006  
28 WL 1465313 at \*7-8 (N.D. Cal., May 24, 2006) (Trumbull, J.) (granting plaintiff's motion to

1 compel defendant's financial statements where defendant agreed to produce such documents,  
2 but nonetheless failed to do so, noting without explanation that the documents defendant agreed  
3 to produce were relevant).

4 Based on the foregoing, defendant's motion to compel is denied.

5 SO ORDERED.

6 Dated: June 28, 2011

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HOWARD R. LOCKETT  
UNITED STATES MAGISTRATE JUDGE

**United States District Court**

For the Northern District of California

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